

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JON S. HOLT,

Defendant.

OPINION AND ORDER

09-cv-708-bbc
05-cr-49-bbc

In an order entered on December 8, 2009, I denied defendant Jon Holt's motion for post conviction relief under 28 U.S.C. § 2255, in which he sought a reduction in the sentence imposed on him on October 25, 2005. Because I neglected to address the issuance of a certificate of appealability under the newly effective amendments to Rule 11 of the Rules Governing Section 2255 Cases, I entered a subsequent order dated December 15, 2009, denying the issuance of a certificate of appealability, finding that no reasonable jurist would believe that defendant's motion has any merit.

On August 6, 2010, defendant filed a motion for reconsideration which I denied on August 27, 2010 as untimely. Now defendant has filed a notice of appeal from the denial

of his § 2255 motion and the denial of his motion for reconsideration. He has not paid the \$455 fee for filing his notice of appeal which is required if he is to take an appeal from the denial of a § 2255 motion. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed. . . ." Defendant was found eligible for court-appointed counsel and I am not prepared to certify that his appeal is not taken in good faith. A reasonable person could find that the appeal has some merit.

As to the issue of a certificate of appealability, I denied the issuance of such a certificate on August 26, 2010, finding that no reasonable jurist would believe that defendant's motion has any merit. It is not necessary to address that issue again.

ORDER

IT IS ORDERED that defendant Jon Holt's motion to proceed on appeal in forma

pauperis on appeal is GRANTED.

Entered this 22d day of September, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge